

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.4981 OF 2006
IN
FIRST APPEAL NO.640 OF 2005**

Union of India and Anr. ...Applicants

vs.

Smt.Hemangi Satish Gumaste & Ors. ...Respondents

Mr.S.R.Rajguru for the Applicants
Mr.Bolinjkar h/f Mr.K.K.Malpathak for Respondent No.2
Mr.S.N.Chandrachud for Respondent Nos.3 & 4.

**CORAM: A.S.OKA, J.
DATE : NOVEMBER 19, 2007.**

P.C.:

1. Heard learned Advocate for the Applicants, the Advocate for Respondent No.2 and the Advocate for Respondent No.3. The learned Advocate for the Respondent No.3 states that Respondent No.4 has since expired and the legal representatives of the deceased Respondent No.4 are already on record. The second Respondent is the grand daughter of the deceased Respondent No.4 and the third Respondent is the grand father of the Respondent No.2. The fourth respondent was the mother of the deceased. The first Respondent is the widow of the deceased. At the time of the accident, the second Respondent was a minor. Now, it is an admitted position that the second Respondent has attained majority. The father of the second Respondent died in an accident involving a vehicle which is admittedly owned by the Applicants.. The Tribunal

recorded a finding that the accident occurred due to negligence on the part of the driver of the military station wagon owned by the Applicants. The total compensation of Rs.3,14,430/- has been awarded to the Respondent No.2 and a sum of Rs.1,57,215/- each has been awarded to the Respondent Nos.3 and 4. The Tribunal directed that the amounts payable to the respondent Nos.3 and 4 shall be paid to them by account payee cheques and the amount payable to the second Respondent shall be invested in fixed deposit and the interest shall be paid to the Respondent No.3. The Applicants were directed to pay interest at the rate of 9% p.a. on the compensation amount from the date of filing of the Application till realization of the entire amount.

2. By ad-interim order dated 23rd November 2006, this court granted ad-interim stay subject to the applicants depositing only principal amount with the trial court.

3. The submission of the learned counsel for the applicants is that the fifth Respondent the driver of the offending vehicle has been acquitted by the criminal court of the offences alleged against him under section 279 and 304 of the Indian Penal Code. He submitted that the evidence of the driver has been disbelieved by the Tribunal only on technical grounds.

4. The tribunal found that the driver did not file written statement. Therefore, the tribunal discarded the version of the driver in his deposition. Considering the nature of the Award, the Applicants will have to deposit the entire amount due and payable as per the impugned Award.

5. The second Respondent has admittedly attained majority. Therefore, the entire amount payable under the Award need not be invested. The fourth respondent has expired. The present age of the third respondent is above 70 years.

6. Considering the aforesaid factual aspects, Civil Application is disposed of by passing the following order :

i) There will be interim relief in terms of prayer clause (a) subject to the Applicants depositing with the tribunal within twelve weeks from today the entire amount due and payable as per the impugned Award payable on the date on which the principal amount was deposited by the Applicants. It is obvious that the applicants will be entitled to adjust the amounts which are already deposited by them earlier. If compliance is not made by depositing the requisite amount within a period of 12 weeks from today, interim relief will stand vacated without further reference to this court.

- ii) The tribunal will permit the second Respondent (Original applicant No.2) to withdraw a sum of Rs.1,00,000/- without any security and a further sum of Rs.2,00,000/- on furnishing adequate security to the satisfaction of the tribunal.
- iii) The tribunal will permit the third respondent to withdraw a sum of Rs.1,50,000/- without any security. The third Respondent will be also entitled to withdraw a further sum of Rs.1,00,000/- on furnishing adequate security to the satisfaction of the tribunal.
- iv) Rest of the amount deposited by the Applicants shall be invested in fixed deposit in any nationalised bank till the final disposal of the appeal. The order of disbursement of the amount along with interest accrued thereon will be passed at the stage of final hearing of the Appeal.

JUDGE